

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of the City and
County of San Francisco

Docket No. C2011-2

PUBLIC REPRESENTATIVE'S REPORT CONCERNING
POTENTIAL FOR SETTLEMENT

(September 15, 2011)

I. INTRODUCTION

On August 16, 2011, the Postal Regulatory Commission (Commission) issued an Order Addressing Compliant and Authorizing Settlement Negotiations (Order No. 808). This order, in part, directed the City and County of San Francisco (Complainant) and the United States Postal Service (Postal Service) to engage in settlement negotiations. It also directed the Public Representative, acting as settlement coordinator, to file a report with the Commission within 30 days of the filing of the order concerning the progress towards settlement. The Public Representative respectfully files the following report.

II. HISTORICAL BACKGROUND

The Complainant originally filed a complaint with the United States District Court for the Northern District of California on May 5, 2011, which challenges the Postal Service's practice of providing single point delivery to single-room occupancy (SRO) buildings.¹ On November 5, 2009, the District Court, in part, dismissed all claims that

¹ Motion of United States Postal Service for Partial Dismissal of the Compliant, June 7, 2011 at 3.

were based on regulatory or statutory grounds, leaving only the Complainant's "constitutional" claims for the District Court. *Id.* The District Court trial is scheduled for January 9, 2012.

On September 8, 2011, the Postal Service filed a Notice of Motion and Motion for Summary Judgment Filed by United States Postal Service with the District Court. There is no indication that the Complainant has filed a similar dispositive motion. The District Court has set a deadline of October 13, 2011, to hear all dispositive motions. The Postal Service anticipates a ruling on its motion sometimes in October 2011.

In the interim, the Complainant filed the instant Postal Regulatory Commission complaint to resolve the "regulatory" issues. See Docket No. C2011-2, Complaint of the City and County of San Francisco, May 18, 2011.

III. POTENTIAL FOR SETTLEMENT

A. Public Representative Actions

The Public Representative contacted both parties on multiple occasions in regard to the potential for settlement. The Public Representative explained that his function as settlement coordinator is to encourage both sides to enter into settlement discussions and to report back to the Commission on any progress towards a negotiated settlement. Assistance was offered to open lines of communication and to facilitate the process. Offers to establish conference calls, or arrange for meeting facilities in Washington, DC were extended. The Public representative offered to answer questions pertaining to the complaint process at the Commission, if necessary. The Public Representative explained that he will not be acting as a mediator in the traditional sense, but certainly is available to independently discuss potential solutions, or to act as a go between for exploring resolution of the complaint.

B. Initial Settlement Offer

The Commission directed the parties to begin settlement negotiations based on a recent Postal Service settlement offer. Order No. 808 at 7. As the Public Representative understands the settlement offer, the Postal Service proposes delivery of SRO building mail to a single locked receptacle located on SRO premises that is installed and maintained by the SRO management/owner. SRO management then would be responsible to distribute the mail to individual occupants of the SRO.

The Public Representative contacted the Postal Service and confirmed that the Postal Service's offer was still available for consideration. Both parties were asked to explore whether or not this offer would result in a viable resolution of the controversy. In the end, agreement could not be reached on acceptance of the Postal Service's offer.

C. Subsequent Settlement Offers

Subsequent to the Postal Service's offer, the Complainant presented two counteroffers to the Postal Service. Both offers can be characterized as taking a position between the Postal Service's original proposal and a requirement that centralized delivery be provided to each and every SRO. Agreement could not be reached on acceptance of the first counteroffer.

The Postal Service received the second counteroffer after close of business on September 14, 2011. The Postal Service is taking this offer under consideration and has stated that it needs time to consider the merits of the proposal. Based on conversations with the Postal Service, the Public Representative estimates that the Postal Service review process will take about one week.

D. Public Representative's Assessment

Both parties have developed settlement offers that potentially will result in improved mail delivery, to some extent, to individual SRO occupants. On this basis,

none of the offers appear unreasonable. However, as of this date, no individual offer has been accepted by both parties.

The Public Representative suggested to both parties that if additional time is needed for discussions, the Public Representative would be willing to approach the Commission with a request for additional time. The Postal Service has indicated that it needs additional time to review the Complainant's latest settlement offer. The Public Representative suggests that the Commission allocate additional time for the Postal Service to review the latest settlement offer, with the Public Representative filing a status report on September 29, 2011.

IV. CONCLUSION

The Public Representative respectfully submits this report for the Commission's consideration.

Respectfully submitted,

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